

pending assessment and shall be afforded an opportunity for a hearing with respect to the assessment of the penalty. Such notification will be by, and such hearing will be before, the Director or designee.

(d) *Marketing penalty reduction.* The Executive Vice President, CCC, or designee, may reduce the amount of any marketing penalty for which a person otherwise would be liable under the provisions of this section upon finding that failure to comply was unintentional or without knowledge on the part of such person and that such reduction would not damage the tobacco program or the administration of this part.

(e) *Prohibition of use, processing or marketing of tobacco for which the assessments have not been paid; other remedies.* The knowing use, processing, or marketing of tobacco in the commerce of the United States of any tobacco for which an assessment or related charge required or provided for by this subpart is past due, is prohibited. The penalties and other remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3198, Jan. 22, 1997]

§ 1464.107 Recordkeeping.

(a) *Retention of records.* Each importer of tobacco shall maintain all records that are relevant to any imported tobacco that is subject to an assessment in accordance with this subpart. Such records shall be retained for a period of three years following the date of entry of such tobacco. The burden of establishing compliance with this part shall be on the importer of the tobacco.

(b) *Examination of records and reports.* The Executive Vice President, CCC, the Director, or any person authorized by one of such persons, or any auditor or agent of the Office of the Inspector General, is authorized to examine any records that such person has reason to believe are relevant to any matter pertinent to the payment of importer assessments under this subpart. Upon request of an authorized person, each importer shall make available for examination such records as are under such importer's control that may be rel-

evant to imported tobacco that is subject to an assessment in accordance with this subpart or otherwise relevant to the administration of this subpart. Upon a failure to provide access or records, the Director may presume that such an inquiry would have produced information unfavorable to the party to the inquiry and shall make further determinations in the matter accordingly.

§ 1464.108 Reconsideration and appeal.

An importer may request the Director to reconsider any determination of the amount of any assessment due, any marketing penalty assessed, or other adverse determination rendered in accordance with this subpart. Any request for reconsideration shall be made within 30 calendar days of the date of the notification of such assessment, marketing penalty, or adverse determination. If the importer is dissatisfied with a determination rendered by the Director with respect to a request for reconsideration, such importer may appeal the determination to the Director, National Appeals Division, USDA. Any such appeal shall be handled in accordance with the provisions of 7 CFR part 780.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3199, Jan. 22, 1997; 68 FR 65385, Nov. 20, 2003]

Subparts C–F [Reserved]

Subpart G—Tobacco Payment Program

SOURCE: 68 FR 18834, Apr. 17, 2003, unless otherwise noted.

§ 1464.601 Applicability and basic terms for payments.

This subpart sets forth the terms and conditions of the Tobacco Payment Program (TOPP). Under this program CCC will make direct payments on a farm relating to basic tobacco quotas or allotments established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*) for eligible tobaccos. Payments are subject to the availability of funds and payment formulas set out in this part.